

# House Amendment 1787

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1 1 Amend House File 909 as follows:  
1 2 #1. Page 106, by inserting after line 21 the  
1 3 following:  
1 4 <DIVISION \_\_\_\_  
1 5 MEDICAID FALSE CLAIMS ACT  
1 6 Sec. \_\_\_\_ NEW SECTION. 685.1 DEFINITIONS.  
1 7 As used in this chapter, unless the context  
1 8 otherwise requires:  
1 9 1. "Claim" means any request or demand for money,  
1 10 property, or services made to any employee, officer,  
1 11 or agent of the state, or to any contractor, grantee,  
1 12 or other recipient, whether under contract or not, if  
1 13 any portion of the money, property, or services  
1 14 requested or demanded issued from, or was provided by,  
1 15 the state, or if the state will reimburse the  
1 16 contractor, grantee, or other recipient for any  
1 17 portion of the money or property which is requested or  
1 18 demanded.  
1 19 2. "Employer" means any natural person,  
1 20 corporation, firm, association, organization,  
1 21 partnership, business, trust, or state-affiliated  
1 22 entity involved in a nongovernmental function,  
1 23 including state universities and state hospitals.  
1 24 3. "Knowing" or "knowingly" means that a person,  
1 25 with respect to information, does any of the  
1 26 following:  
1 27 a. Has actual knowledge of the information.  
1 28 b. Acts in deliberate ignorance of the truth or  
1 29 falsity of the information.  
1 30 c. Acts in reckless disregard of the truth or  
1 31 falsity of the information.  
1 32 "Knowing" or "knowingly" with respect to  
1 33 information does not require proof of specific intent  
1 34 to defraud.  
1 35 4. "Qui tam plaintiff" means a private plaintiff  
1 36 who brings an action under this chapter on behalf of  
1 37 the state.  
1 38 Sec. \_\_\_\_ NEW SECTION. 685.2 ACTS SUBJECTING  
1 39 PERSON TO TREBLE DAMAGES, COSTS, AND CIVIL PENALTIES  
1 40 == EXCEPTIONS.  
1 41 1. A person who commits any of the following acts  
1 42 is liable to the state for three times the amount of  
1 43 damages which the state sustains because of the act of  
1 44 that person. A person who commits any of the  
1 45 following acts shall also be liable to the state for  
1 46 the costs of a civil action brought to recover any of  
1 47 those penalties or damages, and shall be liable to the  
1 48 state for a civil penalty of not less than five  
1 49 thousand dollars and not more than ten thousand  
1 50 dollars for each violation:  
2 1 a. Knowingly presents or causes to be presented to  
2 2 any employee, officer, or agent of the state, or to  
2 3 any contractor, grantee, or other recipient of state  
2 4 funds, a false or fraudulent claim for payment or  
2 5 approval.  
2 6 b. Knowingly makes, uses, or causes to be made or  
2 7 used, a false record or statement to get a false or  
2 8 fraudulent claim paid or approved.  
2 9 c. Conspires to defraud the state by getting a  
2 10 false claim allowed or paid, or conspires to defraud  
2 11 the state by knowingly making, using, or causing to be  
2 12 made or used, a false record or statement to conceal,  
2 13 avoid, or decrease an obligation to pay or transmit  
2 14 money or property to the state.  
2 15 d. Has possession, custody, or control of public  
2 16 property or money used or to be used by the state and  
2 17 knowingly delivers or causes to be delivered less  
2 18 property than the amount for which the person receives  
2 19 a certificate or receipt.  
2 20 e. Is authorized to make or deliver a document  
2 21 certifying receipt of property used or to be used by  
2 22 the state and knowingly makes or delivers a receipt  
2 23 that falsely represents the property used or to be  
2 24 used.

2 25 f. Knowingly buys, or receives as a pledge of an  
2 26 obligation or debt, public property from any person  
2 27 who lawfully may not sell or pledge the property.  
2 28 g. Knowingly makes, uses, or causes to be made or  
2 29 used, a false record or statement to conceal, avoid,  
2 30 or decrease an obligation to pay or transmit money or  
2 31 property to the state.  
2 32 h. Is a beneficiary of an inadvertent submission  
2 33 of a false claim to any employee, officer, or agent of  
2 34 the state, or to any contractor, grantee, or other  
2 35 recipient of state funds, subsequently discovers the  
2 36 falsity of the claim, and fails to disclose the false  
2 37 claim to the state within a reasonable time after  
2 38 discovery of the false claim.

2 39 2. Notwithstanding subsection 1, the court may  
2 40 assess not less than two times the amount of damages  
2 41 which the state sustains because of the act of the  
2 42 person described in subsection 1, and no civil  
2 43 penalty, if the court finds all of the following:  
2 44 a. The person committing the violation furnished  
2 45 officials of the state who are responsible for  
2 46 investigating false claims violations with all  
2 47 information known to that person about the violation  
2 48 within thirty days after the date on which the person  
2 49 first obtained the information.  
2 50 b. The person fully cooperated with any  
3 1 investigation by the state.  
3 2 c. At the time the person furnished the state with  
3 3 information about the violation, a criminal  
3 4 prosecution, civil action, or administrative action  
3 5 had not commenced with respect to the violation, and  
3 6 the person did not have actual knowledge of the  
3 7 existence of an investigation into the violation.  
3 8 3. This section shall not apply to claims,  
3 9 records, or statements made under Title X relating to  
3 10 state revenue and taxation.

3 11 Sec. \_\_\_\_\_. NEW SECTION. 685.3 INVESTIGATIONS AND  
3 12 PROSECUTIONS == POWERS OF PROSECUTING AUTHORITY ==  
3 13 CIVIL ACTIONS BY INDIVIDUALS AS QUI TAM PLAINTIFFS AND  
3 14 AS PRIVATE CITIZENS == JURISDICTION OF COURTS.

3 15 1. The attorney general shall diligently  
3 16 investigate a violation under section 685.2. If the  
3 17 attorney general finds that a person has violated or  
3 18 is violating section 685.2, the attorney general may  
3 19 bring a civil action under this section against that  
3 20 person.  
3 21 2. a. A person may bring a civil action for a  
3 22 violation of this chapter for the person and for the  
3 23 state in the name of the state. The person bringing  
3 24 the action shall be referred to as the qui tam  
3 25 plaintiff. Once filed, the action may be dismissed  
3 26 only with the written consent of the court, taking  
3 27 into account the best interest of the parties involved  
3 28 and the public purposes behind this chapter.  
3 29 b. A copy of the complaint and written disclosure  
3 30 of substantially all material evidence and information  
3 31 the person possesses shall be served on the attorney  
3 32 general. The complaint shall also be filed in camera,  
3 33 shall remain under seal for at least sixty days, and  
3 34 shall not be served on the defendant until the court  
3 35 so orders. The state may elect to intervene and  
3 36 proceed with the action within sixty days after it  
3 37 receives both the complaint and the material evidence  
3 38 and the information.  
3 39 c. The state may, for good cause shown, move the  
3 40 court for extensions of the time during which the  
3 41 complaint remains under seal under paragraph "b". Any  
3 42 such motions may be supported by affidavits or other  
3 43 submissions in camera. The defendant shall not be  
3 44 required to respond to any complaint filed under this  
3 45 section until after the complaint is unsealed and  
3 46 served upon the defendant pursuant to rules of civil  
3 47 procedure.  
3 48 d. Before the expiration of the sixty-day period  
3 49 or any extensions obtained under paragraph "c", the  
3 50 state shall do one of the following:  
4 1 (1) Proceed with the action, in which case the  
4 2 action shall be conducted by the state.  
4 3 (2) Notify the court that the state declines to  
4 4 take over the action, in which case the person  
4 5 bringing the action shall have the right to conduct

4 6 the action.

4 7 e. When a person brings a valid action under this  
4 8 section, no person other than the state may intervene  
4 9 or bring a related action based on the facts  
4 10 underlying the pending action.

4 11 3. a. If the state proceeds with the action, the  
4 12 state shall have the primary responsibility for  
4 13 prosecuting the action, and shall not be bound by an  
4 14 act of the person bringing the action. Such person  
4 15 shall have the right to continue as a party to the  
4 16 action, subject to the limitations specified in  
4 17 paragraph "b".

4 18 b. (1) The state may move to dismiss the action  
4 19 for good cause notwithstanding the objections of the  
4 20 qui tam plaintiff if the qui tam plaintiff has been  
4 21 notified by the state of the filing of the motion and  
4 22 the court has provided the qui tam plaintiff with an  
4 23 opportunity to oppose the motion and present evidence  
4 24 at a hearing.

4 25 (2) The state may settle the action with the  
4 26 defendant notwithstanding the objections of the qui  
4 27 tam plaintiff if the court determines, after a hearing  
4 28 providing the qui tam plaintiff an opportunity to  
4 29 present evidence, that the proposed settlement is  
4 30 fair, adequate, and reasonable under all of the  
4 31 circumstances.

4 32 (3) Upon a showing by the state that unrestricted  
4 33 participation during the course of the litigation by  
4 34 the person initiating the action would interfere with  
4 35 or unduly delay the state's prosecution of the case,  
4 36 or would be repetitious, irrelevant, or for purposes  
4 37 of harassment, the court may, in its discretion,  
4 38 impose limitations on the person's participation,  
4 39 including but not limited to any of the following:

4 40 (a) Limiting the number of witnesses the person  
4 41 may call.

4 42 (b) Limiting the length of the testimony of such  
4 43 witnesses.

4 44 (c) Limiting the person's cross-examination of  
4 45 witnesses.

4 46 (d) Otherwise limiting the participation by the  
4 47 person in the litigation.

4 48 (4) Upon a showing by the defendant that  
4 49 unrestricted participation during the course of the  
4 50 litigation by the person initiating the action would  
5 1 be for purposes of harassment or would cause the  
5 2 defendant undue burden or unnecessary expense, the  
5 3 court may limit the participation by the person in the  
5 4 litigation.

5 5 c. If the state elects not to proceed with the  
5 6 action, the person who initiated the action shall have  
5 7 the right to conduct the action. If the state  
5 8 requests, the state shall be served with copies of all  
5 9 pleadings filed in the action and shall be supplied  
5 10 with copies of all deposition transcripts at the  
5 11 state's expense. When a person proceeds with the  
5 12 action, the court, without limiting the status and  
5 13 rights of the person initiating the action, may permit  
5 14 the state to intervene at a later date upon a showing  
5 15 of good cause.

5 16 d. Whether or not the state proceeds with the  
5 17 action, upon a showing by the state that certain  
5 18 actions of discovery by the person initiating the  
5 19 action would interfere with the state's investigation  
5 20 or prosecution of a criminal or civil matter arising  
5 21 out of the same facts, the court may stay such  
5 22 discovery for a period of not more than sixty days.  
5 23 Such a showing shall be conducted in camera. The  
5 24 court may extend the sixty-day period upon a further  
5 25 showing in camera that the state has pursued the  
5 26 criminal or civil investigation or proceedings with  
5 27 reasonable diligence and any proposed discovery in the  
5 28 civil action will interfere with the ongoing criminal  
5 29 or civil investigation or proceedings.

5 30 e. Notwithstanding subsection 2, the state may  
5 31 elect to pursue its claim through any alternate remedy  
5 32 available to the state, including any administrative  
5 33 proceeding to determine a civil penalty. If any such  
5 34 alternate remedy is pursued in another proceeding, the  
5 35 person initiating the action shall have the same  
5 36 rights in such proceeding as such person would have

5 37 had if the action had continued under this section.  
5 38 Any finding of fact or conclusion of law made in such  
5 39 other proceeding that has become final shall be  
5 40 conclusive as to all parties to an action under this  
5 41 section. For purposes of this paragraph, a finding or  
5 42 conclusion is final if it has been finally determined  
5 43 on appeal to the appropriate court of the state, if  
5 44 all time for filing such an appeal with respect to the  
5 45 finding or conclusion has expired, or if the finding  
5 46 or conclusion is not subject to judicial review.

5 47 4. a. (1) If the state proceeds with an action  
5 48 brought by a person under subsection 2, the person  
5 49 shall, subject to subparagraph (2), receive at least  
5 50 fifteen percent but not more than twenty-five percent  
6 1 of the proceeds of the action or settlement of the  
6 2 claim, which includes damages, civil penalties,  
6 3 payments for costs of compliance, and any other  
6 4 economic benefit realized by the state or federal  
6 5 government as a result of the action, depending upon  
6 6 the extent to which the person substantially  
6 7 contributed to the prosecution of the action.

6 8 (2) If the action is one which the court finds to  
6 9 be based primarily on disclosures of specific  
6 10 information, other than information provided by the  
6 11 person bringing the action, relating to allegations or  
6 12 transactions specifically in a criminal, civil, or  
6 13 administrative hearing, or in a legislative or  
6 14 administrative report, hearing, audit, or  
6 15 investigation, or from the news media, the court may  
6 16 award an amount the court considers appropriate, but  
6 17 in no case more than ten percent of the proceeds,  
6 18 taking into account the significance of the  
6 19 information and the role of the person bringing the  
6 20 action in advancing the case to litigation.

6 21 (3) Any payment to a person under subparagraph (1)  
6 22 or (2) shall be made from the proceeds. Any such  
6 23 person shall also receive an amount for reasonable  
6 24 expenses which the appropriate court finds to have  
6 25 been necessarily incurred, plus reasonable attorney  
6 26 fees and costs. All such expenses, fees, and costs  
6 27 shall be awarded against the defendant.

6 28 b. If the state does not proceed with an action  
6 29 under this section, the person bringing the action or  
6 30 settling the claim shall receive an amount which the  
6 31 court decides is reasonable for collecting the civil  
6 32 penalty and damages. The amount shall be not less  
6 33 than twenty-five percent and not more than thirty  
6 34 percent of the proceeds of the action or settlement  
6 35 and shall be paid out of such proceeds, which includes  
6 36 damages, civil penalties, payments for costs of  
6 37 compliance, and any other economic benefit realized by  
6 38 the state or federal government as a result of the  
6 39 action. Such person shall also receive an amount for  
6 40 reasonable expenses which the appropriate court finds  
6 41 to have been necessarily incurred, plus reasonable  
6 42 attorney fees and costs. All such expenses, fees, and  
6 43 costs shall be awarded against the defendant.

6 44 c. Whether or not the state proceeds with the  
6 45 action, if the court finds that the action was brought  
6 46 by a person who planned and initiated the violation of  
6 47 section 685.2 upon which the action was brought, the  
6 48 court may, to the extent the court considers  
6 49 appropriate, reduce the share of the proceeds of the  
6 50 action which the person would otherwise receive under  
7 1 paragraph "a" or "b", taking into account the role of  
7 2 that person in advancing the case to litigation and  
7 3 any relevant circumstances pertaining to the  
7 4 violation. If the person bringing the action is  
7 5 convicted of criminal conduct arising from the  
7 6 person's role in the violation of section 685.2, the  
7 7 person shall be dismissed from the civil action and  
7 8 shall not receive any share of the proceeds of the  
7 9 action. Such dismissal shall not prejudice the right  
7 10 of the state to continue the action.

7 11 d. If the state does not proceed with the action  
7 12 and the person bringing the action conducts the  
7 13 action, the court may award to the defendant  
7 14 reasonable attorney fees and expenses if the defendant  
7 15 prevails in the action and the court finds that the  
7 16 claim of the person bringing the action was clearly  
7 17 frivolous, clearly vexatious, or brought primarily for

7 18 purposes of harassment.  
7 19 5. a. A court shall not have jurisdiction over an  
7 20 action brought under subsection 2 against a member of  
7 21 the general assembly, a member of the judiciary, or an  
7 22 executive branch official if the action is based on  
7 23 evidence or information known to the state when the  
7 24 action was brought.

7 25 b. A person shall not bring an action under  
7 26 subsection 2 which is based upon allegations or  
7 27 transactions which are the subject of a civil suit or  
7 28 an administrative civil penalty proceeding in which  
7 29 the state is already a party.

7 30 c. Upon motion of the attorney general, the court  
7 31 may in consideration of all the equities, dismiss a  
7 32 qui tam plaintiff if the elements of the actionable  
7 33 false claims alleged in the qui tam complaint have  
7 34 been publicly disclosed specifically in the news media  
7 35 or in a publicly disseminated governmental report, at  
7 36 the time the complaint is filed.

7 37 d. The state is not liable for expenses which a  
7 38 person incurs in bringing an action under this  
7 39 section.

7 40 6. Any employee who is discharged, demoted,  
7 41 suspended, threatened, harassed, or in any other  
7 42 manner discriminated against in the terms and  
7 43 conditions of employment by the person's employer  
7 44 because of lawful acts performed by the employee on  
7 45 behalf of the employee or others in furtherance of an  
7 46 action under this section, including investigation  
7 47 for, initiation of, testimony for, or assistance in an  
7 48 action filed or to be filed under this section, shall  
7 49 be entitled to all relief necessary to make the  
7 50 employee whole. Such relief shall include  
8 1 reinstatement with the same seniority status such  
8 2 employee would have had but for the discrimination,  
8 3 two times the amount of back pay, interest on the back  
8 4 pay, and compensation for any special damages  
8 5 sustained as a result of the discrimination, including  
8 6 litigation costs and reasonable attorney fees. An  
8 7 employee may bring an action in the appropriate court  
8 8 of the state for the relief provided in this  
8 9 subsection.

8 10 Sec. \_\_\_\_\_. NEW SECTION. 685.4 LIMITATION OF  
8 11 ACTIONS == BURDEN OF PROOF.

8 12 1. A civil action under section 685.3 shall not be  
8 13 brought more than ten years after the date on which  
8 14 the violation was committed.

8 15 2. A civil action under section 685.3 may be  
8 16 brought based on activity prior to January 1, 2007, if  
8 17 the limitations period pursuant to subsection 1 has  
8 18 not lapsed.

8 19 3. In any action brought under section 685.3, the  
8 20 state or the qui tam plaintiff shall be required to  
8 21 prove all essential elements of the cause of action,  
8 22 including damages, by a preponderance of the evidence.

8 23 4. Notwithstanding any other provision of law, a  
8 24 guilty verdict rendered in a criminal proceeding  
8 25 charging false statements or fraud, whether upon a  
8 26 verdict after trial or upon a plea of guilty or nolo  
8 27 contendere, shall estop the defendant from denying the  
8 28 essential elements of the offense in any action which  
8 29 involves the same transaction as in the criminal  
8 30 proceeding and which is brought under section 685.3,  
8 31 subsection 1, 2, or 3.

8 32 Sec. \_\_\_\_\_. NEW SECTION. 685.5 REMEDIES UNDER  
8 33 OTHER LAWS == APPLICATION.

8 34 1. The provisions of this chapter are not  
8 35 exclusive, and the remedies provided for in this  
8 36 chapter shall be in addition to any other remedies  
8 37 provided for in any other law or available under  
8 38 common law.

8 39 2. This chapter shall be liberally construed and  
8 40 applied to promote the public interest. This chapter  
8 41 shall also be construed and applied in a manner that  
8 42 reflects the congressional intent behind the federal  
8 43 False Claims Act, 31 U.S.C. } 3729-3733, including the  
8 44 legislative history underlying the 1986 amendments to  
8 45 the federal False Claims Act.

8 46 Sec. \_\_\_\_\_. NEW SECTION. 685.6 VENUE.

8 47 An action brought under this chapter may be brought  
8 48 in any judicial district in which the defendant or, in

8 49 the case of multiple defendants, any one defendant can  
8 50 be found, resides, transacts business, or in which any  
9 1 act proscribed under this chapter occurred. A summons  
9 2 as required by the rules of civil procedure shall be  
9 3 issued by the appropriate district court and service  
9 4 at any place within or outside the United States.

9 5 Sec. \_\_\_\_\_. NEW SECTION. 685.7 USE OF ECONOMIC  
9 6 BENEFIT TO STATE.

9 7 Any funds realized as an economic benefit to the  
9 8 state under this chapter are appropriated to the  
9 9 department of human services to be used for provision  
9 10 of home and community-based wavier services.

9 11 Sec. \_\_\_\_\_. EFFECTIVE DATE == RETROACTIVE  
9 12 APPLICABILITY. This division of this Act, being  
9 13 deemed of immediate importance, takes effect upon  
9 14 enactment and is retroactively applicable to January  
9 15 1, 2007.>

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9 19 HEATON of Henry

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